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Counsel for San Francisco Technology Inc.

U.S. District Court  
Northern District of California

San Francisco Technology Inc.

Plaintiff

vs.

Aero Products International Inc., BP  
Lubricants USA Inc., BRK Brands Inc.,  
Calico Brands Inc., Cooper Lighting LLC,  
Darex LLC, Dexas International Ltd., Dyna-  
Gro Nutrition Solutions, Fiskars Brands Inc.,  
Global Concepts Inc., Homax Products Inc.,  
Kimberly-Clark Corporation, Kraco  
Enterprises LLC, Lixit Corporation, Mead  
Westvaco Corporation, Nutrition 21 Inc.,  
Oatey Co., Optimum Technologies Inc.,  
Newell Rubbermaid Inc., Schick  
Manufacturing Inc., The Scotts Company  
LLC, Sterling International Inc., Vitamin  
Power Incorporated, Woodstream  
Corporation, 4-D Design Inc.

Defendants

E-FILING ADR

Filed

JUL 8 2010  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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SI

CV 10-02994

Case No.

Complaint

HRL

Demand For Jury Trial

MOUNT & STOELKER, P.C.  
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1 Aero Products International Inc. ("Aero"), BP Lubricants USA Inc. ("BP"), BRK Brands Inc.  
 2 ("BRK"), Calico Brands Inc. ("Calico"), Cooper Lighting LLC ("Cooper Lighting"), Darex LLC  
 3 ("Darex"), Dexas International Ltd. ("Dexas"), Dyna-Gro Nutrition Solutions ("Dyna-Gro"), Fiskars  
 4 Brands Inc. ("Fiskars"), Global Concepts Inc. ("Global Concepts"), Homax Products Inc. ("Homax"),  
 5 Kimberly-Clark Corporation ("Kimberly-Clark"), Kraco Enterprises LLC ("Kraco"), Lixit  
 6 Corporation ("Lixit"), Mead Westvaco Corporation ("Mead Westvaco"), Nutrition 21 Inc. ("Nutrition  
 7 21"), Oatey Co. ("Oatey"), Optimum Technologies Inc. ("Optimum"), Newell Rubbermaid Inc.  
 8 ("Rubbermaid"), Schick Manufacturing Inc. ("Schick"), The Scotts Company LLC ("Scotts"),  
 9 Sterling International Inc. ("Sterling"), Vitamin Power Incorporated ("Vitamin Power"), Woodstream  
 10 Corporation ("Woodstream"), and 4-D Design Inc. ("4-D Design") and alleges as follows:

### 11 Nature of Action

12 1. This is a *qui tam* action to impose civil fines for false marking. As alleged further  
 13 below, each defendant has falsely marked articles in violation of 35 U.S.C. § 292 and must be civilly  
 14 fined for each offense: "Whoever marks upon, or affixes to, or uses in advertising in connection with  
 15 any unpatented article, the word 'patent' or any word or number importing that the same is patented,  
 16 for the purpose of deceiving the public ... Shall be fined not more than \$500 for every such offense."  
 17 Each defendant has falsely marked products with patents to induce the public to believe that each  
 18 such product is protected by each patent listed and with knowledge that nothing is protected by an  
 19 expired patent. Accordingly, each defendant falsely marked articles with intent to deceive the public.

### 20 Parties

21 2. SF Tech: Plaintiff San Francisco Technology is a Delaware Corporation with its  
 22 principal place of business in San Jose, California.

23 3. Aero: Upon information and belief, Aero is a Florida business entity with a place of  
 24 business at 1834 Walden Office Square, Third Floor, Schaumburg, IL, 60173.

25 4. BP: Upon information and belief, BP is a Delaware business entity with a place of  
 26 business at 1500 Valley Road, Wayne, NJ, 07470.

27 5. BRK: Upon information and belief, BRK is a Delaware business entity with a place of  
 28 business at 3901 Liberty Street Road, Aurora, IL 60504.

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1           6.     Calico: Upon information and belief, Calico is a California business entity with a  
2 place of business at 2055 South Haven Ave, Ontario, CA, 91761.

3           7.     Cooper: Upon information and belief, Cooper is a Delaware business entity with a  
4 place of business at 1121 Highway 74 S., Peachtree City, GA 30269-3019.

5           8.     Darex: Upon information and belief, Darex is a Oregon business entity with a place of  
6 business at 210 E. Hersey, Ashland, OR, 97520.

7           9.     Dexas: Upon information and belief, Dexas is a Texas business entity with a place of  
8 business at 585 South Royal Lane, Suite 200, Coppell, TX 75019.

9           10.    Dyna-Gro: Upon information and belief, Dyna-Gro is a dissolved California business  
10 entity with a place of business at 2775 Giant Road, Richmond, CA 94806.

11          11.    Fiskars: Upon information and belief, Fiskars is a Wisconsin business entity with a  
12 place of business at 2537 Daniels St, Madison, WI, 53718.

13          12.    Global Concepts: Upon information and belief, Global Concepts is a Florida business  
14 entity with a place of business at 676 South Military Trail, Deerfield Beach, FL, 33442.

15          13.    Homax: Upon information and belief, Homax is a Delaware business entity with a  
16 place of business at 200 Westerly Road, Bellingham, WA, 98226.

17          14.    Kimberly-Clark: Upon information and belief, Kimberly-Clark is a Delaware business  
18 entity with a place of business at 351 Phelps Dr., Irving, TX, 75038.

19          15.    Kraco: Upon information and belief, Kraco is an Illinois business entity with a place  
20 of business at 505 East Euclid Ave, Compton, CA, 90224.

21          16.    Lixit: Upon information and belief, Lixit is a California business entity with a place of  
22 business at 100 Combs Street, Napa, CA, 94559-3941.

23          17.    Mead Westvaco: Upon information and belief, Mead Westvaco is a Delaware business  
24 entity with a place of business at 501 South 5th Street, Richmond, VA, 23219.

25          18.    Nutrition 21: Upon information and belief, Nutrition 21 is a New York business entity  
26 with a place of business at 4 Manhattanville Road, Purchase, NY 10577.

27          19.    Oatey: Upon information and belief, Oatey is an Ohio business entity with a place of  
28 business at 4700 W. 160th Street, Cleveland, OH, 44135.

20. Optimum: Upon information and belief, Optimum is a Georgia business entity with a place of business at 570 Joe Frank Harris Pkwy., Cartersville, GA, 30120.

21. Rubbermaid: Upon information and belief, Rubbermaid is a Delaware business entity with a place of business at 3 Glenlake Parkway, Atlanta, GA, 30328.

22. Schick: Upon information and belief, Schick is a Delaware business entity with a place of business at 533 Maryville University Drive, St. Louis, MO, 63141.

23. Scotts: Upon information and belief, Scotts is a Ohio business entity with a place of business at 14111 Scottslawn Road, Marysville, OH, 43041.

24. Sterling: Upon information and belief, Sterling is a Washington business entity with a place of business at 3808 N. Sullivan Road, Building 16, Spokane, WA, 99216.

25. Vitamin Power: Upon information and belief, Vitamin Power is a New York business entity with a place of business at 39 Saint Mary's Place, Freeport, NY 11520.

26. Woodstream: Upon information and belief, Woodstream is a Missouri business entity with a place of business at 69 N. Locust St., Lititz, PA, 17543.

27. 4-D Design: Upon information and belief, 4-D Design is a New Jersey business entity with a place of business at 3 Russell Court, Long Branch, NJ, 07740.

### **Jurisdiction & Venue**

28. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1355(a).

29. Venue is appropriate in this District under 28 U.S.C. §§ 1391(b) and 1395(a).

30. This court has personal jurisdiction over each defendant, as alleged further below.

31. Aero: Upon information and belief, Aero has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic. Aero advertises its products, including its falsely marked products on its web site, at [www.aerobed.com](http://www.aerobed.com). Aero advertises on that web site<sup>1</sup> that its products are sold at many retail store chains which have locations in California and in this District, including Bed Bath & Beyond, Sears, Costco, Dicks' Sporting Goods, Kohls, REI, Sports Authority, and Target.

<sup>1</sup> [http://www.aerobed.com/CustomerService\\_Retail.html](http://www.aerobed.com/CustomerService_Retail.html)

32. BP: Upon information and belief, BP has appointed an agent for service of process in California: The Corporation Company, 1232 Q St. 1st Floor, Sacramento, CA 95811. BP advertises on its web site<sup>2</sup> that its products are sold at many retail store chains which have locations in California and in this District, including 10 retail locations within a 5 mile radius of zip code 95113, where this court is located. Upon information and belief, BP has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

33. BRK: Upon information and belief, BRK has appointed an agent for service of process in California: CT Corporation System, 818 West Seventh St, Los Angeles, CA, 90017. BRK advertises on its web site<sup>3</sup> that its products are sold in at least three places in California, including two in this District. Upon information and belief, BP has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

34. Calico: Upon information and belief, Calico's principal place of business is in Ontario, California. Upon information and belief, Calico has appointed an agent for service of process in California: Gerald K. Kitano, 3435 Wilshire Blvd, Ste 1800, Los Angeles, CA, 90010. Upon information and belief, Calico has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

35. Cooper: Upon information and belief, Cooper has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic. Cooper advertises its products, including its falsely marked products on its web site, at [www.cooperlighting.com](http://www.cooperlighting.com). Cooper advertises on that web

<sup>2</sup> <http://www.castrol.com/castrol/iframe.do?categoryId=9021346&contentId=7038271>

<sup>3</sup> <http://www.brkelectronics.com/RepLocator#CA>

1 site<sup>4</sup> that its products are sold at over 400 retail stores in California, many in this District.

2 36. Darex: Darex advertises on its web site<sup>5</sup> that its products are sold at retail stores in this  
3 District. Upon information and belief, Darex has sold its products, including its falsely marked  
4 products in California and in this District and/or in the stream of commerce with knowledge that they  
5 would be sold in California and in this District. Upon information and belief, such sales are  
6 substantial, continuous, and systematic.

7 37. Dexas: Upon information and belief, Dexas has sold its products, including its falsely  
8 marked products in California and in this District and/or in the stream of commerce with knowledge  
9 that they would be sold in California and in this District. Upon information and belief, such sales are  
10 substantial, continuous, and systematic.

11 38. Dyna-Gro: Upon information and belief, Dyna-Gro's principal place of business is in  
12 Richmond, California, which is in this District. Upon information and belief, Dyna-Gro has  
13 appointed an agent for service of process in California: David Neal, 1065 Broadway Ave, San Pablo,  
14 CA 94806. Upon information and belief, Dyna-Gro has sold its products, including its falsely  
15 marked products in California and in this District and/or in the stream of commerce with knowledge  
16 that they would be sold in California and in this District. Upon information and belief, such sales are  
17 substantial, continuous, and systematic.

18 39. Fiskars: Upon information and belief, Fiskars has appointed an agent for service of  
19 process in California: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service,  
20 2730 Gateway Oaks Dr. Ste 100, Sacramento, CA, 95833. Upon information and belief, Fiskars has  
21 sold its products, including its falsely marked products in California and in this District and/or in the  
22 stream of commerce with knowledge that they would be sold in California and in this District. Upon  
23 information and belief, such sales are substantial, continuous, and systematic.

24 40. Global Concepts: Upon information and belief, Global Concepts has sold its products,  
25 including its falsely marked products in California and in this District and/or in the stream of  
26 commerce with knowledge that they would be sold in California and in this District. Upon  
27 information and belief, such sales are substantial, continuous, and systematic.

28 <sup>4</sup> [http://www.cooperlighting.com/content/where\\_to\\_purchase/search\\_dis.asp?type=1&state=CA&p=2&brand=](http://www.cooperlighting.com/content/where_to_purchase/search_dis.asp?type=1&state=CA&p=2&brand=)

<sup>5</sup> <http://www.drilldoctor.com/pilot.asp?pg=retailers>



41. Homax: Upon information and belief, Homax has appointed an agent for service of process in California: United Corporate Services, Inc., 608 University Ave, Sacramento, CA 95825. Homax advertises on that web site<sup>6</sup> that its products are sold at many retail store chains which have locations in California and in this District. Upon information and belief, Homax has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

42. Kimberly-Clark: Upon information and belief, Kimberly-Clark has appointed an agent for service of process in California: CT Corporation System, 818 West Seventh St, Los Angeles, CA, 90017. Upon information and belief, Kimberly-Clark has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

43. Kraco: Upon information and belief, Kraco's principal place of business is in Compton, CA. Upon information and belief, Kraco has appointed an agent for service of process in California: CT Corporation System. Kraco advertises on its web site<sup>7</sup> that its products are sold at retail store chains with locations in this District, such as Auto Zone, Kragen, Costco, Target, and Wal-Mart. Upon information and belief, Kraco has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

44. Lixit: Upon information and belief, Lixit is a California corporation with its principal place of business in Napa, California, which is within this District. Upon information and belief, Lixit has appointed an agent for service of process in California: Linda Parks, 100 Coombs St, Napa, CA 94559. Upon information and belief, Lixit has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are

<sup>6</sup> <http://www.homaxproducts.com/assistance/find/index.html>

<sup>7</sup> <http://www.kraco.com/retailers.htm>

substantial, continuous, and systematic.

45. Mead Westvaco: Upon information and belief, Mead Westvaco has appointed an agent for service of process in California: CT Corporation System, 818 West Seventh Street, Los Angeles, CA, 90017. Upon information and belief, Mead Westvaco has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

46. Nutrition 21: Nutrition 21 advertises on its web site<sup>8</sup> that its products are sold at retail store chains that have locations in this District, such as CVS, Rite-Aid, Target, Walgreens, and Albertsons. Upon information and belief, Nutrition 21 has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

47. Oatey: Upon information and belief, Oatey has appointed an agent for service of process in California: The Corporation Company, 1232 Q St. 1st Floor, Sacramento, CA, 95811. Oatey advertises on its web site<sup>9</sup> that its products are sold at retail store chains with locations in this District, such as Ace Hardware, Home Depot, and Lowes. Upon information and belief, Oatey has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

48. Optimum: Upon information and belief, Optimum has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

49. Rubbermaid: Upon information and belief, Rubbermaid has appointed an agent for service of process in California: Corporation Service Company, 2730 Gateway Oaks Dr. Ste 100, Sacramento, CA, 95833. Upon information and belief, Rubbermaid has sold its products, including

<sup>8</sup> <http://www.icelandhealth.com/store-list.html>

<sup>9</sup> [http://www.oatey.com/Plumber/Exclusive/Oatey\\_Retailers.html](http://www.oatey.com/Plumber/Exclusive/Oatey_Retailers.html)



1 its falsely marked products in California and in this District and/or in the stream of commerce with  
 2 knowledge that they would be sold in California and in this District. Upon information and belief,  
 3 such sales are substantial, continuous, and systematic.

4 50. Schick: Upon information and belief, Schick has appointed an agent for service of  
 5 process in California: CT Corporation System, 818 West Seventh St, Los Angeles, CA, 90017. Upon  
 6 information and belief, Schick has sold its products, including its falsely marked products in  
 7 California and in this District and/or in the stream of commerce with knowledge that they would be  
 8 sold in California and in this District. Upon information and belief, such sales are substantial,  
 9 continuous, and systematic.

10 51. Scotts: Upon information and belief, Scotts has appointed an agent for service of  
 11 process in California: CT Corporation System. Upon information and belief, Scotts has sold its  
 12 products, including its falsely marked products in California and in this District and/or in the stream  
 13 of commerce with knowledge that they would be sold in California and in this District. Upon  
 14 information and belief, such sales are substantial, continuous, and systematic.

15 52. Sterling: Sterling advertises on its web site<sup>10</sup> that its products are sold at retail store  
 16 chains with locations in this District, such as Ace Hardware, Albertsons, Costco, Home Depot,  
 17 Long's Drugs, Lowes, Orchard Supply Hardware (specifically indicating its California stores), and  
 18 Wal-Mart. Upon information and belief, Sterling has sold its products, including its falsely marked  
 19 products in California and in this District and/or in the stream of commerce with knowledge that they  
 20 would be sold in California and in this District. Upon information and belief, such sales are  
 21 substantial, continuous, and systematic.

22 53. Vitamin Power: Upon information and belief, Vitamin Power offers for sale its  
 23 products, including its falsely marked products, to residents of California and this District, including  
 24 by mailing marketing literature such as catalogues. Upon information and belief, Vitamin Power has  
 25 sold its products, including its falsely marked products in California and in this District and/or in the  
 26 stream of commerce with knowledge that they would be sold in California and in this District. Upon  
 27 information and belief, such sales are substantial, continuous, and systematic.

28  
<sup>10</sup> <http://www.rescue.com/find/>

54. Woodstream: Woodstream advertises on its web site<sup>11</sup> that its products are sold at retail store chains that have locations in this District, such as Ace Hardware. Upon information and belief, Woodstream has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

55. 4-D Design: Upon information and belief, 4-D Design has sold its products, including its falsely marked products in California and in this District and/or in the stream of commerce with knowledge that they would be sold in California and in this District. Upon information and belief, such sales are substantial, continuous, and systematic.

#### **Intradistrict Assignment**

56. Assignment to the San Jose Division is appropriate because a substantial portion of the events or a substantial portion of the harm underlying this case occurred in Santa Clara County. Plaintiff SF Tech has its principal place of business in San Jose, in Santa Clara County. Although the claims in this Complaint arise under 35 U.S.C. § 292, which is codified with the patent statutes, no claim is asserted concerning infringement or validity of any patent. Therefore, this case appears to be inappropriate for District-wide assignment under Civil Local Rule 3-2(c).

#### **Count 1. Aero's False Marking**

57. SF Tech incorporates by reference all above allegations.

58. Upon information and belief, Aero makes and sells many types of products, including the Original Aerobed and the Aerobed Premier Intelliwarmth.

59. Aero's The Original Aerobed is sold in packages marked: "This product may be covered under one or more of the following U.S. and/or foreign patents: U.S. Pat. Nos. 4,977,633; 5,267,363; 5,367,726; 6,237,621; 6,508,264; 6,598,626; 6,701,559; 6,755,208; 6,986,360; 6,996,867; 7,025,576; 7,039,972; 7,165,283; 7,128,525; D464,225; D490,635; D513,145; D594,880" Such packages are also marked with a copyright date of 2010. Aero's Premier Intelliwarmth product is sold in packages marked: "This product is covered under one or more of the following U.S. and/or

<sup>11</sup> <http://www.saferbrand.com/customerservice/where-to-buy>

foreign patents: U.S. Pat. Nos. 4,977,633; 5,367,726; 6,237,621; 6,508,264; 6,755,208...Patented warming technology provided by ThermoSoft, US Patent No: 6,403,935; 6,563,094; 6,713,733." Upon information and belief, U.S. Patent No. 4,977,633 expired no later than 7/26/2009.

60. Aero's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,977,633. Upon information and belief, Aero has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,977,633, including each time it has printed or otherwise created such packaging.

61. Upon information and belief, Aero marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Aero falsely marked its products with intent to deceive the public.

#### **Count 2. BP's False Marking**

62. SF Tech incorporates by reference all above allegations.

63. Upon information and belief, BP makes and sells many kinds of products, including Castrol GTX SAE0W-30 Motor Oil. BP marks the packages in which this product is sold "US Patent No. D 314,509; US Patent No. 5,663,126." Upon information and belief, U.S. Patent No. D314,509 expired no later than 2/13/2008.

64. BP's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. D314,509. Upon information and belief, BP has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. D314,509, including each time it has printed or otherwise created such packaging.

65. Upon information and belief, BP marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, BP falsely marked its products with intent to deceive the public.

#### **Count 3. BRK's False Marking**

66. SF Tech incorporates by reference all above allegations.

67. Upon information and belief, BRK makes and sells many kinds of products, including

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1 First Alert Smoke & Carbon Monoxide Alarms. BRK marks the packages in which these products  
 2 are sold: "This product may be covered by one or more of the following U.S. Patents: 4,901,056;  
 3 6,426,703; 6,377,182; and 6,762,688." Upon information and belief, U.S. Patent No. 4,901,056  
 4 expired no later than 1/5/2008.

5 68. BRK's falsely marked products are being sold retail in 2010 with such false markings,  
 6 after the expiration of U.S. Patent No. 4,901,056. Upon information and belief, BRK has made many  
 7 decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,901,056,  
 8 including each time it has printed or otherwise created such packaging.

9 69. Upon information and belief, BRK marks its products with patents to induce the  
 10 public to believe that each such product is protected by each patent listed and with knowledge that  
 11 nothing is protected by an expired patent. Accordingly, BRK falsely marked its products with intent  
 12 to deceive the public.

#### 13 Count 4. Calico's False Marking

14 70. SF Tech incorporates by reference all above allegations.

15 71. Upon information and belief, Calico makes and sells many kinds of products,  
 16 including Scripto Aim N' Flame lighters, including model GM9C. Calico marks the packages in  
 17 which these products were sold: "U.S. Patents 6,093,017 5,697,775 6,042,367 5,897,308 D377,736  
 18 5,716,204 5,898,013" Such packages are also marked with a copyright date of 2009. Upon  
 19 information and belief, U.S. Patent Nos. 5,716,204 and 5,898,013 expired no later than 2/10/2006 and  
 20 4/27/2007, respectively.

21 72. Calico's falsely marked products are being sold retail in 2010 with such false  
 22 markings, after the expiration of U.S. Patent Nos. 5,716,204 and 5,898,013. Upon information and  
 23 belief, Calico has made many decisions to mark its falsely marked products after the expiration of  
 24 U.S. Patent Nos. 5,716,204 and 5,898,013, including each time it has printed or otherwise created  
 25 such packaging.

26 73. Upon information and belief, Calico marks its products with patents to induce the  
 27 public to believe that each such product is protected by each patent listed and with knowledge that  
 28 nothing is protected by an expired patent. Accordingly, Calico falsely marked its products with intent

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1 to deceive the public.

2 **Count 5. Cooper Lighting's False Marking**

3 74. SF Tech incorporates by reference all above allegations.

4 75. Upon information and belief, Cooper Lighting makes and sells many types of  
5 products, including its Two-Way Room Sensor Model 01-083, Motion Activated Security Halogen  
6 Floodlight, Motion Activated 1100 Motion Sensor Security Floodlight, and Security Light Model  
7 E70.

8 76. Cooper Lighting advertises the Two Way Room Sensor Model 01-083 on its web  
9 site<sup>12</sup> in an advertisement marked: "U.S. Letters Patent No. Des. 290, 239." Upon information and  
10 belief, U.S. Patent No. D290,239 expired no later than 6/10/2001.

11 77. Cooper Lighting marks the packaging in which the Motion Activated Security  
12 Halogen Floodlight is sold: "Patent • Patente # D363,804". Cooper Lighting marks the packaging in  
13 which the Motion Activated 1100 Motion Sensor Security Floodlight is sold: "Patent • Patente #  
14 D363,804". Upon information and belief, U.S. Patent No. D363,804 expired no later than 11/1/2009.

15 78. Cooper Lighting advertises the E70H Security Light on its web site<sup>13</sup> in an  
16 advertisement marked: "Patent 4,905,132". Upon information and belief, U.S. Patent No. 4,905,132  
17 expired no later than 12/23/2008.

18 79. Cooper' falsely marked products are being sold retail and advertised in 2010 with such  
19 false markings, after the expiration of U.S. Patent Nos. D290,239, D363,804, and 4,905,132. Upon  
20 information and belief, Cooper has made many decisions to mark its falsely marked products after the  
21 expiration of U.S. Patent Nos. D290,239, D363,804, and 4,905,132, including each time it has printed  
22 or otherwise created such packaging and such advertisements and for the duration of the time its  
23 advertisements are displayed on its web site.

24 80. Upon information and belief, Cooper marks its products with patents to induce the  
25 public to believe that each such product is protected by each patent listed and with knowledge that  
26 nothing is protected by an expired patent. Accordingly, Cooper falsely marked its products with  
27 intent to deceive the public.

28 <sup>12</sup> [http://www.cooperlighting.com/specfiles/instGuides/novitas\\_083inst\\_1195%201.PDF](http://www.cooperlighting.com/specfiles/instGuides/novitas_083inst_1195%201.PDF)

<sup>13</sup> <http://www.cooperlighting.com/specfiles/instGuides/E70H%20825-0140.pdf>

**Count 6. Darex's False Marking**

81. SF Tech incorporates by reference all above allegations.

82. Upon information and belief, Darex makes and sells many types of products, including the Drill Doctor 350x. The packaging in which this product is sold is marked: "U.S. Patents D385567 5,735,732 5,400,546 4,471,581 Other Patents Pending" Upon information and belief, U.S. Patent No. 4,471,581 expired no later than 9/10/2002.

83. Darex's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,471,581. Upon information and belief, Darex has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,471,581, including each time it has printed or otherwise created such packaging.

84. Upon information and belief, Darex marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Darex falsely marked its products with intent to deceive the public.

**Count 7. Dexas' False Marking**

85. SF Tech incorporates by reference all above allegations.

86. Upon information and belief, Dexas makes and sells many kinds of products, including the Clipulator / The Calculator Grippboard. Dexas marks the packages in which these products were sold: "US PATENT #284678 PATENTS WORLDWIDE." Upon information and belief, the marking refers to U.S. Patent No. D284678, which expired no later than 7/16/2000.

87. Dexas' falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. D284678. Upon information and belief, Dexas has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. D284678, including each time it has printed or otherwise created such packaging.

88. Upon information and belief, Dexas marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Dexas falsely marked its products with intent to deceive the public.



**Count 8. Dyna-Gro's False Marking**

89. SF Tech incorporates by reference all above allegations.

90. Upon information and belief, Dyna-Gro makes and sells many kinds of products, including Dyna-Gro Root Gel. Dyna-Gro marks the packages in which this product was sold: "U.S. Pat. 5,143,536." Upon information and belief, U.S. Patent. No. 5,143,536 expired no later than 9/2/2009.

91. Dyna-Gro's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 5,143,536. Upon information and belief, Dyna-Gro has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 5,143,536, including each time it has printed or otherwise created such packaging.

92. Upon information and belief, Dyna-Gro marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Dyna-Gro falsely marked its products with intent to deceive the public.

**Count 9. Fiskars' False Marking**

93. SF Tech incorporates by reference all above allegations.

94. Upon information and belief, Fiskars makes and sells many types of products, including 5" Precision Micro Scissors, Fiskars RollSharp Knife Sharpener, Spring Action Scissors, and Fiskars Micro-tip Blades.

95. Fiskars' 5" Precision Micro Scissor products are sold in packages marked: "U.S. Patents: 4715122, D302099." Such packages are also marked with a copyright date of 2006. Upon information and belief, U.S. Patent Nos. 4,715,122 and D302099 expired no later than 9/30/2006 and 7/12/2003, respectively.

96. Fiskars' RollSharp Knife Sharpener products are sold in packages marked: "Patents:/ Brevets:/ Patentes:/ D308,018, 4,723,375." Upon information and belief, U.S. Patent Nos. D308,018 and 4,723,375 expired no later than 5/23/2004 and 1/29/2007, respectively.

97. Fiskars' Spring Action Scissors products are sold in packages marked: "US Patents: 5377412 & 4715122 Other patents pending." Upon information and belief, U.S. Patent Nos.

1 5,377,412 and 4,715,122 expired no later than 1/20/2010 and 9/30/2006, respectively.

2 98. Fiskars' Micro-Tip Blades products are sold in packages marked: "US Patents  
3 4,715,122 & 5,297,343 US Design Patent D354,890." Upon information and belief, U.S. Patent Nos.  
4 4,715,122, and D354,890 expired no later than 9/20/2006 and 2/1/2009, respectively.

5 99. Fiskars' falsely marked products are being sold retail in 2010 with such false  
6 markings, after the expiration of U.S. Patent Nos. 4,715,122, 4,723,375, 5,377,412, D302,099,  
7 D308,018, and D354890. Upon information and belief, Fiskars has made many decisions to mark its  
8 falsely marked products after the expiration of U.S. Patent No Nos. 4,715,122, 4,723,375, 5,377,412,  
9 D302,099, D308,018, and D354890., including each time it has printed or otherwise created such  
10 packaging.

11 100. Upon information and belief, Fiskars marks its products with patents to induce the  
12 public to believe that each such product is protected by each patent listed and with knowledge that  
13 nothing is protected by an expired patent. Accordingly, Fiskars falsely marked its products with  
14 intent to deceive the public.

15 **Count 10. Global Concepts' False Marking**

16 101. SF Tech incorporates by reference all above allegations.

17 102. Upon information and belief, Global Concepts makes and sells many types of  
18 products, including Riddex Plus pest repellent aid. Global Concepts marks the packages in which  
19 this product is sold: "US Patent No. 4,802,057 & 6,400,995". Upon information and belief, U.S.  
20 Patent Nos. 4,802,057 expired no later than 1/12/2008.

21 103. Global Concepts' falsely marked products are being sold retail in 2010 with such false  
22 markings, after the expiration of U.S. Patent No. 4,802,057. Upon information and belief, Global  
23 Concepts has made many decisions to mark its falsely marked products after the expiration of U.S.  
24 Patent No. 4,802,057, including each time it has printed or otherwise created such packaging.

25 104. Upon information and belief, Global Concepts marks its products with patents to  
26 induce the public to believe that each such product is protected by each patent listed and with  
27 knowledge that nothing is protected by an expired patent. Accordingly, Global Concepts falsely  
28 marked its products with intent to deceive the public.

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**Count 11. Homax's False Marking**

105. SF Tech incorporates by reference all above allegations.

106. Upon information and belief, Homax makes and sells many types of products, including Homax Orange Peel & Knockdown Ceiling Texture Vertical Spray and Homax Acoustic Patch Ceiling Repair.

107. Homax Orange Peel & Knockdown Ceiling Texture Vertical Spray is sold in packages marked "US PATENTS # 5,037,011; 5,188,263; 5,310,095; 5,409,148; 5,489,048; 5,524,798; 5,645,198; 5,655,691; 5,715,975; 5,921,446; 5,934,518; 6,000,583; 6,116,473; 6,276,570; 6,328,185; 6,446,842; 6,536,633; CANADIAN PATENTS 2,090,185 Other US and foreign patents pending." Homax Acoustic Patch Ceiling Repair is sold in packages marked: "US PATENTS # 5,037,011; 5,188,263; 5,310,095; 5,409,148; 5,489,048; 5,524,798; 5,645,198; 5,655,691; 5,715,975; 5,921,446; 5,934,518; 6,000,583; 6,116,473; 6,276,570; 6,328,185; 6,446,842; 6,536,633; CANADIAN PATENTS 2,090,185 Other US and foreign patents pending." Upon information and belief, U.S. Patent Nos. 5,037,011 and 5,188,263 expired no later than 5/1/2010 and 8/7/2008, respectively.

108. Homax's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,802,057. Upon information and belief, Homax has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 4,802,057, including each time it has printed or otherwise created such packaging.

109. Upon information and belief, Homax marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Homax falsely marked its products with intent to deceive the public.

**Count 12. Kimberly-Clark's False Marking**

110. SF Tech incorporates by reference all above allegations.

111. Upon information and belief, Kimberly-Clark makes and sells many types of products, including Scott Brand Hand Wipes. Kimberly Clark marks the packages in which these products are sold: "U.S. Patent Nos. 4,775,582; 4,833,003, and 4,853,281." Such packages are also marked with a copyright date of 2006. Upon information and belief, U.S. Patent Nos. 4,775,582, 4,833,003, and

1 4,853,281 expired no later than 8/16/2006, 8/16/2006, and 10/5/2005, respectively.

2 112. Kimberly-Clark's falsely marked products are being sold retail in 2010 with such false  
3 markings, after the expiration of U.S. Patent Nos. 4,775,582, 4,833,003, and 4,853,281. Upon  
4 information and belief, Kimberly-Clark has made many decisions to mark its falsely marked products  
5 after the expiration of U.S. Patent Nos. 4,775,582, 4,833,003, and 4,853,281, including each time it  
6 has printed or otherwise created such packaging.

7 113. Upon information and belief, Kimberly-Clark marks its products with patents to  
8 induce the public to believe that each such product is protected by each patent listed and with  
9 knowledge that nothing is protected by an expired patent. Accordingly, Kimberly-Clark falsely  
10 marked its products with intent to deceive the public.

11 **Count 13. Kraco's False Marking**

12 114. SF Tech incorporates by reference all above allegations.

13 115. Upon information and belief, Kraco makes and sells many types of products, including  
14 vehicle floor mats.

15 116. Kraco marks its Goodyear Multi Season Floormats: "Covered by one or more of the  
16 following U.S. and Canadian Patents: U.S. D-447-103, D-447-104, D-313-789, D-358-571, D-393-  
17 238". Upon information and belief, U.S. Patent Nos. D313,789 and D358,571 expired no later than  
18 1/16/2005 and 5/24/2009, respectively. Kraco marks the Earthfriendly ECOessential Recycled  
19 Carpet Floormat: "Covered by one or more of the following U.S. and Canadian Patents: U.S. D-447-  
20 103, D-447-104, D-313-789, D-358-571, D-393-238".

21 117. Kraco advertises its products on its web site at [www.kraco.com](http://www.kraco.com). Kraco marks that  
22 advertisement:<sup>14</sup> "Products shown on this web site are covered by one or more of the following U.S.  
23 and Canadian Patents: U.S. D477-103, D477-104, D469-726, D313-789, D358-571, D393-238,  
24 D458-884, D470-092, D457-845, D467-532". This advertisement is also marked with a copyright  
25 date of 2010. Upon information and belief, U.S. Patent Nos. D313,789 and D358,571 expired no  
26 later than 1/16/2005 and 5/24/2009, respectively.

27  
28  
<sup>14</sup> <http://www.kraco.com/disclaimer.htm>

118. Kraco's website lists the following products for sale, identified by product number:<sup>15</sup>  
 #4104, #9904, #9914, #9804, #8804, #2414, #1214, #904, #824, #814, #6404, #1404,  
 #234, #1804, #504, #5904, #1004, #3702, #2102, #5704, #1603, #3629, #8304, #6804, #4304,  
 #6704, #3004, #1700, #2000, #810, #7500, #8500, #8510, #9500, #3500, #3510, #2510, #4500,  
 V2500, 2520, CT202, KD702, U70, CT7102, U71, U90, CT902, MB-0500, MD-0600, MB-0520,  
 MD-0620, MB-0560, MD-0660, MB-0510, MB-0511, MB-0530, MB-0540, 4204, 6100, 6300, 6204,  
 5004, 6004, 6000, 60. This page is also marked with a copyright date of 2010.

119. Kraco's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent Nos. D313,789 and D358,571. Upon information and belief, Kraco has made many decisions to mark its falsely marked products after the expiration of U.S. Patent Nos. D313,789 and D358,571, including each time it has printed or otherwise created such packaging and for the entire duration that each such advertisement is displayed on its web site.

120. Upon information and belief, Kraco marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Kraco falsely marked its products with intent to deceive the public.

#### **Count 14. Lixit's False Marking**

121. SF Tech incorporates by reference all above allegations.

122. Upon information and belief, Lixit makes and sells many types of products, including No Drip Dog Bottle. Lixit marks the packages in which this product is sold: "PATENT NO. 2,939,424". Upon information and belief, U.S. Patent No. 2,939,424 expired no later than 6/8/1977.

123. Lixit's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 2,939,424. Upon information and belief, Lixit has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No. 2,939,424, including each time it has printed or otherwise created such packaging.

124. Upon information and belief, Lixit marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is

<sup>15</sup> <http://www.kraco.com/products.htm>

protected by an expired patent. Accordingly, Lixit falsely marked its products with intent to deceive the public.

**Count 15. Mead Westvaco's False Marking**

125. SF Tech incorporates by reference all above allegations.

126. Upon information and belief, Mead Westvaco makes and sells many types of products, including envelopes, security envelopes and the TS800 line of spray bottle heads.

127. Mead Westvaco marks the boxes in which it sells 50 white envelopes and security envelopes: "U.S. Patent No. 4,838,430". Such boxes are also marked with a copyright date of 2009. Upon information and belief U.S. Patent No. 4,838,430 expired no later than 1/17/2007.

128. Mead Westvaco advertises the TS800 line of products on its website at [www.meadwestvaco.com](http://www.meadwestvaco.com), including an advertisement for its sprayer products.<sup>16</sup> That advertisement has a copyright date of 2010 and marks the sprayer products:

a. TS800® Standard: 4,747,523; 4,971,227; 5,360,127; 5,647,539; 5,678,765;

5,685,445; Patent Pending

b. TS800® ERGO: 4,747,523; 4,971,227; 5,360,127; 5,647,539; 5,678,765;

5,685,445; D381,581. Patent Pending

c. TS800® ULTRA ERGO: 4,747,523; 4,971,227; 5,360,127; 5,647,539;

5,678,765; 5,685,445; D419,875; Patent Pending

d. TS800® Custom: 4,747,523; 4,971,227; 5,360,127; 5,647,539; 5,678,765;

5,685,445; D366,692; D358,198. Patent Pending

129. Upon information and belief, U.S. Patent Nos. 4,747,523, 4,838,430, 4,971,227, 5,685,445, D358,198, D366,692 expired no later than 6/20/2007, 1/17/2007, 6/3/2009, 11/1/2009, 5, 1/31/2010, 5/10/2009, respectively.

130. Mead Westvaco's falsely marked products are being sold retail and advertised in 2010 with such false markings, after the expiration of U.S. Patent Nos. 4,747,523, 4,838,430, 4,971,227, 5,685,445, D358,198, D366,692. Upon information and belief, Mead Westvaco has made many decisions to mark its falsely marked products after the expiration of U.S. Patent Nos. 4,747,523,

<sup>16</sup> <http://www.meadWestvaco.com/DispensingSolutions/HomeandGarden/MWVD004918>



1 4,838,430, 4,971,227, 5,685,445, D358,198, D366,692, including each time it has printed or  
 2 otherwise created such packaging and for the entire duration that the products are advertised on its  
 3 web site.

4 131. Upon information and belief, Mead Westvaco marks its products with patents to  
 5 induce the public to believe that each such product is protected by each patent listed and with  
 6 knowledge that nothing is protected by an expired patent. Accordingly, Mead Westvaco falsely  
 7 marked its products with intent to deceive the public.

8 **Count 16. Nutrition 21's False Marking**

9 132. SF Tech incorporates by reference the above allegations.

10 133. Upon information and belief, Nutrition 21 makes and sells many types of products,  
 11 including Iceland Health Advanced Memory Formula. Nutrition 21 marks the packages in which this  
 12 product is sold: "protected under patent No. 5,087,623". Nutrition 21 emphasizes its patent marking  
 13 in its advertising on its website, www.icelandmemory.com: "IMPORTANT NOTICE: It has come to  
 14 our attention that there are a number of unauthorized websites claiming to sell Advanced Memory  
 15 Formula as well as other Iceland Health products. Please be advised that this product's formulation is  
 16 patented and proprietary. As such, we, the manufacturer, cannot ensure or guarantee the efficacy of  
 17 the ingredients, formulation or authenticity of the products being sold. To ensure best results, we  
 18 recommend you only buy from these Iceland Health authorized websites www.icelandhealth.com or  
 19 www.icelandmemory.com". Such page is also marked with a copyright date of 2010. In addition,  
 20 Nutrition 21 advertises on the Advanced Memory Formula product page:<sup>17</sup> "Our patented, exclusive  
 21 formula features:

- 22 • Omega-3 DHA to help maintain brain fluidity and may help in maintenance of
- 23 cognitive functions
- 24 • Phosphatidylserine to support communication between brain cells and to promote
- 25 improved memory
- 26 • Chromium Picolinate to promote healthy blood sugar, important for brain health"
- 27
- 28

<sup>17</sup> <http://www.icelandhealth.com/All-Products/28-Advanced-Memory-Formula.html>

1 134. Upon information and belief, U.S. Patent No. 5,087,623 expired no later than  
2 2/12/2009.

3 135. Nutrition 21's falsely marked products are being sold retail in 2010 with such false  
4 markings, after the expiration of U.S. Patent No. 5,087,623. Upon information and belief, Nutrition  
5 21 has made many decisions to mark its falsely marked products after the expiration of U.S. Patent  
6 No. 5,087,623, including each time it has printed or otherwise created such packaging.

7 136. Upon information and belief, Nutrition 21 marks its products with patents to induce  
8 the public to believe that each such product is protected by each patent listed and with knowledge that  
9 nothing is protected by an expired patent. Accordingly, Nutrition 21 falsely marked its products with  
10 intent to deceive the public.

11 **Count 17. Oatey's False Marking**

12 137. SF Tech incorporates by reference all above allegations.

13 138. Upon information and belief, Oatey makes and sells many types of products, including  
14 Water Soluble Tinning Flux Plumbing Solder Kit with SafeFlo Silver Lead Free Solder (model  
15 50692), Oatey Solder & Lead Products using Safe-Flo™, DWV J-Hook ("The Original J-Hook").

16 139. Oatey marks the packages in which Water Soluble Tinning Flux Plumbing Solder Kit  
17 with SafeFlo Silver Lead Free Solder (model 50692) is sold with: "SafeFlo Solder-U.S. Patent No.  
18 4,879,096 H-20 Flux-U.S. Patent No. 6,752,309". Upon information and belief, U.S. Patent No.  
19 4,879,096 expired no later than 4/20/2009.

20 140. Oatey advertises its Oatey Solder & Lead Products using Safe-Flo products on its web  
21 site at www.oatey.com. That advertisement<sup>18</sup> is marked: "Oatey Safe-Flo®Silver is a patented\* alloy  
22 of Tin, Copper, Silver, and Bismuth that works much like 50/50 solder." On page 2 it is marked: "\*  
23 U.S. Patent No. 4,879,096." Upon information and belief, U.S. Patent No. 4,879,096 expired no later  
24 than 4/20/2009.

25 141. Oatey advertises its WV J-Hook ("The Original J-Hook") product on its web site.  
26 That advertisement<sup>19</sup> was marked: "Patent No. 4407478". During the time when that advertisement  
27

28 <sup>18</sup> [http://www.oatey.com/apps/catalog/instance\\_assets/assets/How\\_to\\_Use/Solder\\_Lead\\_Products.pdf](http://www.oatey.com/apps/catalog/instance_assets/assets/How_to_Use/Solder_Lead_Products.pdf)

<sup>19</sup> <http://webcache.googleusercontent.com/search?q=cache:6uxWEIMyERAJ:www.oatey.com/Plumber/Shared/ProductGrou>

1 was so marked, it had a copyright date of 2010. Upon information and belief, U.S. Patent No.  
2 4,407,478 expired no later than 3/7/2001.

3 142. Oatey's falsely marked products are being sold retail and advertised in 2010 with such  
4 false markings, after the expiration of U.S. Patent No. 4,879,096. Upon information and belief,  
5 Oatey has made many decisions to mark its falsely marked products after the expiration of U.S.  
6 Patents Nos. 4,879,096 and 4,407,478, including each time it has printed or otherwise created such  
7 packaging and for the entire duration when each such advertisement is displayed on its web site.

8 143. Upon information and belief, Oatey marks its products with patents to induce the  
9 public to believe that each such product is protected by each patent listed and with knowledge that  
10 nothing is protected by an expired patent. Accordingly, Oatey falsely marked its products with intent  
11 to deceive the public.

12 **Count 18. Optimum's False Marking**

13 144. SF Tech incorporates by reference all above allegations.

14 145. Upon information and belief, Optimum makes and sells many types of products,  
15 including the LOK-LIFT Rug Gripper product. Optimum marks the packages in which this product  
16 are sold: "U.S. Patent #'s 5120587; 4405668." Such packaging is also marked with a copyright date  
17 of 2005. Upon information and belief, U.S. Patent No. 4,405,668 expired no later than 12/11/2002.

18 146. Optimum's falsely marked products are being sold retail in 2010 with such false  
19 markings, after the expiration of U.S. Patent No. 4,405,668. Upon information and belief, Optimum  
20 has made many decisions to mark its falsely marked products after the expiration of U.S. Patent No.  
21 4,405,668, including each time it has printed or otherwise created such packaging.

22 147. Upon information and belief, Optimum marks its products with patents to induce the  
23 public to believe that each such product is protected by each patent listed and with knowledge that  
24 nothing is protected by an expired patent. Accordingly, Optimum falsely marked its products with  
25 intent to deceive the public.

26 **Count 19. Rubbermaid's False Marking**

27 148. SF Tech incorporates by reference all above allegations.

1           149. Upon information and belief, Rubbermaid makes and sells many types of products,  
2 including its paint roller cover product. Rubbermaid marks the packaging in which this product is  
3 sold: "Patent No.'s 4,692,975; 5,206,968 & 5,468,207". Upon information and belief, U.S. Patent No.  
4 4,692,975 expired no later than 12/12/2005.

5           150. Rubbermaid's falsely marked products are being sold retail in 2010 with such false  
6 markings, after the expiration of U.S. Patent No. 4,692,975. Upon information and belief,  
7 Rubbermaid has made many decisions to mark its falsely marked products after the expiration of U.S.  
8 Patent No. 4,692,975, including each time it has printed or otherwise created such packaging.

9           151. Upon information and belief, Rubbermaid marks its products with patents to induce  
10 the public to believe that each such product is protected by each patent listed and with knowledge that  
11 nothing is protected by an expired patent. Accordingly, Rubbermaid falsely marked its products with  
12 intent to deceive the public.

13                                   **Count 20.    Schick's False Marking**

14           152. SF Tech incorporates by reference all above allegations.

15           153. Upon information and belief, Schick makes and sells many kinds of products,  
16 including the Schick Comfort Plus Xtreme 3 (with Aloe). Schick marks the packages in which this  
17 product was sold: "Covered by one or more US Pat. Nos. 6,182,366; 6,167,625; 6,138,361;  
18 6,112,412; 4,778,640; 4,850,106; 5,079,839; 6,772,523; US D 445,958." Upon information and  
19 belief, U.S. Patent Nos. 4,778,640, 4,850, 106, and 5,079,839 expired no later than 1/17/2007,  
20 1/17/2007, and 7/26/2006, respectively.

21           154. Schick's falsely marked products are being sold retail in 2010 with such false  
22 markings, after the expiration of U.S. Patent Nos. 4,778,640, 4,850, 106, and 5,079,839. Upon  
23 information and belief, Schick has made many decisions to mark its falsely marked products after the  
24 expiration of U.S. Patent No Nos. 4,778,640, 4,850, 106, and 5,079,839, including each time it has  
25 printed or otherwise created such packaging.

26           155. Upon information and belief, Schick marks its products with patents to induce the  
27 public to believe that each such product is protected by each patent listed and with knowledge that  
28 nothing is protected by an expired patent. Accordingly, Schick falsely marked its products with

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1 intent to deceive the public.

2 **Count 21. Scotts' False Marking**

3 156. SF Tech incorporates by reference all above allegations.

4 157. Upon information and belief, Scotts makes and sells many types of products, including  
5 Scotts Super Turf Builder, Scotts Miracle-Gro Water Soluble All-Purpose Plant Food, and Miracle-  
6 Gro Watering Can Singles All-Purpose Plant Food.

7 158. Scotts marks the packaging in which its Scotts Super Turf Builder product is sold:  
8 "U.S. Patent No. 5,102,440". Upon information and belief, U.S. Patent No. 5,102,440 expired no  
9 later than 4/3/2010.

10 159. Scotts marks the packaging in which its Scotts Miracle-Gro Water Soluble All-  
11 Purpose Plant Food is sold: "This product is covered by one or more of the following U.S. patents:  
12 5,171,349; 5,395,418; 5,492,553." Upon information and belief, U.S. Patent No. 5,395,418 expired  
13 no later than 12/16/2009.

14 160. Scotts marks the packaging in which its Scotts Miracle-Gro Watering Can Singles All-  
15 Purpose Plant Food is sold: "This product is covered by one or more of the following U.S. patents:  
16 5,171,349; 5,395,418; 5,492,553." Upon information and belief, U.S. Patent No. 5,395,418 expired  
17 no later than 12/16/2009.

18 161. Scotts' falsely marked products are being sold retail in 2010 with such false markings,  
19 after the expiration of U.S. Patent Nos. 5,102,440 and 5,395,418. Upon information and belief,  
20 Scotts has made many decisions to mark its falsely marked products after the expiration of U.S.  
21 Patent Nos. 5,102,440 and 5,395,418, including each time it has printed or otherwise created such  
22 packaging.

23 162. Upon information and belief, Scotts marks its products with patents to induce the  
24 public to believe that each such product is protected by each patent listed and with knowledge that  
25 nothing is protected by an expired patent. Accordingly, Scotts falsely marked its products with intent  
26 to deceive the public.

27 **Count 22. Sterling's False Marking**

28 163. SF Tech incorporates by reference all above allegations.

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1           164. Upon information and belief, Sterling makes and sells many types of products,  
2 including Rescue Reusable Fly Trap, Rescue Disposable Yellowjacket Trap, Rescue Disposable Fly  
3 Trap, and Rescue Disposable Big Bag Fly Trap.

4           165. Sterling marks the packaging in which its Rescue Reusable Fly Trap product is sold:  
5 "U.S. Patent # 4638592". Such packaging is also marked with a copyright date of 2007. Upon  
6 information and belief, U.S. Patent No. 4,638,592 expired no later than 10/22/2005.

7           166. Sterling marks the packaging in which its Rescue Disposable Yellowjacket Trap  
8 product is sold: "Made under one or more of the following U.S. patents: 4873787, 4899485". Such  
9 packaging is also marked with a copyright date of 2008. Upon information and belief, U.S. Patent  
10 Nos. 4,873,787 and 4,899,485 expired no later than 9/15/2008 and 2/14/2006, respectively.

11           167. Sterling marks the packaging in which its Rescue Disposable Fly Trap product is  
12 sold: "Made under one or more of the following U.S. patents: 4873787, 4899485". Upon information  
13 and belief, U.S. Patent Nos. 4,873,787 and 4,899,485 expired no later than 9/15/2008 and 2/14/2006,  
14 respectively.

15           168. Sterling marks the packaging in which its Rescue Big Bag Disposable Fly Trap  
16 product is sold: "Made under one or more of the following U.S. patents: 4873787, 4899485". Upon  
17 information and belief, U.S. Patent Nos. 4,873,787 and 4,899,485 expired no later than 9/15/2008 and  
18 2/14/2006, respectively.

19           169. Sterling's falsely marked products are being sold retail in 2010 with such false  
20 markings, after the expiration of U.S. Patent Nos. 4,638,592, 4,873,787 and 4,899,485. Upon  
21 information and belief, Sterling has made many decisions to mark its falsely marked products after  
22 the expiration of U.S. Patent Nos. 4,638,592, 4,873,787 and 4,899,485, including each time it has  
23 printed or otherwise created such packaging.

24           170. Upon information and belief, Sterling marks its products with patents to induce the  
25 public to believe that each such product is protected by each patent listed and with knowledge that  
26 nothing is protected by an expired patent. Accordingly, Sterling falsely marked its products with  
27 intent to deceive the public.  
28



**Count 23. Vitamin Power's False Marking**

171. SF Tech incorporates by reference all above allegations.

172. Upon information and belief, Vitamin Power sells many types of products, including Chromium Picolinate, Pycnogenol-30mg, Cholesto-Plex Tablets.

173. Vitamin Power advertises its Chromium Picolinate product on its web site<sup>20</sup> and in its paper catalog. Those advertisements are marked: "Chromium Picolinate is licensed under U.S. Patent #4,315,927". Such advertisements are also marked with a copyright date of 2010. Upon information and belief, U.S. Patent No. 4,315,927 expired no later than 8/9/2000.

174. In its paper catalogue, Vitamin Power marks its Pycnogenol-30mg product: "protected by U.S. Patent #4,698,360" Upon information and belief, US. Patent No. 4,698,360 expired no later than 4/10/2005.

175. Vitamin Power's advertisements for its Cholesto-Plex Tablets products on its web site<sup>21</sup> and in its print catalog are marked: "patented by the U.S. government (U.S. Patents 4,923,855, 4,954,492)". Upon information and belief, U.S. Patent Nos. 4,923,855 and 4,954,492 expired no later than 5/9/2007 and 9/5/2007, respectively.

176. Vitamin Power's falsely marked products are being advertised in 2010 with such false markings, after the expiration of U.S. Patent Nos. 4,315,927, 4,698,360, 4,923,855 and 4,954,492. Upon information and belief, Vitamin Power has made many decisions to mark its falsely marked products after the expiration of U.S. Patent Nos. 4,315,927, 4,698,360, 4,923,855 and 4,954,492, including each time it has printed or otherwise created its paper catalog, each time it distributes a copy of its print catalog, and for the entire duration when its web advertisements are displayed.

177. Upon information and belief, Vitamin Power marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Vitamin Power falsely marked its products with intent to deceive the public.

**Count 24. Woodstream's False Marking**

178. SF Tech incorporates by reference all above allegations.

<sup>20</sup> <http://www.vitaminpower.com/diet-boosters.aspx>

<sup>21</sup> <http://www.vitaminpower.com/hearthealth.aspx>

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179. Upon information and belief, Woodstream makes and sells many types of products, including Safer Brand 3-in-1 garden spray and Perky-Pet Antguard for Hummingbird Feeders.

180. Woodstream marks the packaging in which its Safer Brand 3-in-1 garden spray product is sold: "US Patent #5,093,124". Upon information and belief, U.S. Patent. No. 5,093,124 expired no later than 11/21/2009.

181. Woodstream marks the packaging in which its Perky-Pet AntGuard for Hummingbird Feeders product is sold: "U.S. Patent Nos. 4 782 662 4 890 416 5 274 950". Upon information and belief, U.S. Patent Nos. 4,782,662 and 4,890,416 expired no later than 11/9/2005, and 11/9/2005, respectively.

182. Woodstream's falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent Nos. 5,093,124, 4,782,662 and 4,890,416. Upon information and belief, Woodstream has made many decisions to mark its falsely marked products after the expiration of U.S. Patent Nos. 5,093,124, 4,782,662 and 4,890,416, including each time it has printed or otherwise created such packaging.

183. Upon information and belief, Woodstream marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, Woodstream falsely marked its products with intent to deceive the public.

#### **Count 25. 4-D Design' False Marking**

184. SF Tech incorporates by reference all above allegations.

185. Upon information and belief, 4-D Design makes and sells many types of products, including its Bottom of 4-D Design Clock product. 4-D Design marks the packaging in which this product is sold: "U.S.A. PATENT NO. 4858209 / INT. PATENT PENDING / © 1988 4-D DESIGN INC. MADE IN TAIWAN". This marking is also marked with a copyright date of 1988. Upon information and belief, U.S. Patent No. 4,858,209 expired no later than 8/15/2001.

186. 4-D Design' falsely marked products are being sold retail in 2010 with such false markings, after the expiration of U.S. Patent No. 4,858,209. Upon information and belief, 4-D Design has made many decisions to mark its falsely marked products after the expiration of U.S.

Patent No. 4,858,209, including each time it has printed or otherwise created such packaging.

187. Upon information and belief, 4-D Design marks its products with patents to induce the public to believe that each such product is protected by each patent listed and with knowledge that nothing is protected by an expired patent. Accordingly, 4-D Design falsely marked its products with intent to deceive the public.

### Demand For Judgment

SF Tech demands judgment against each defendant, as follows:

1. A declaration that each defendant violated 35 U.S.C. § 292.
2. A civil fine of \$500 for each offense — half paid to the U.S., and half paid to SF Tech.
3. Any other relief the court deems appropriate.

### Demand For Jury Trial

SF Tech demands a jury trial on all issues so triable.

Date: July 8, 2010

Mount & Stoelker, P.C.,

/s/ Dan Fingerman

Counsel for San Francisco Technology Inc.



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